



The City of San Diego

Staff Report

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TO: City Council

FROM: Council President's Office

SUBJECT: Proposed Residential and Commercial Eviction Moratorium Due to the Declared State of Emergency from COVID-19

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Council District(s): Citywide

OVERVIEW:

The novel coronavirus, also known as COVID-19, is a pandemic that has caused a significant adverse effect on our local economy in the City of San Diego. On March 12, 2020, the County of San Diego issued an order from the Public Health Officer requiring, among other things, all bars, adult entertainment establishments, and other business establishments in the County that serve alcohol and do not serve food to close, and requiring all restaurants to reduce occupancy for on-site dining.

On March 16, Governor Gavin Newsom issued Executive Order N-28-20 to provide guidance to local jurisdictions to halt evictions and foreclosures. The [order](#) gives local governments the authority to halt evictions for renters and homeowners. The order also protects Californians from utility shutoffs. The protections will remain in effect through May 31, 2020, unless extended.

Also, on March 16, the Mayor issued [Executive Order No. 2020-1](#) prohibiting, among other things, public gatherings of 50 or more people in a single room, closing all bars, adult entertainment establishments, and nightclubs in the City, and prohibiting restaurants from serving food and beverage for consumption on premises.

On March 17, 2020, at the direction of Council President Gomez, the San Diego City Council considered and approved working on a comprehensive package of [14 relief actions](#) to help our residents and businesses to have the resources for economic relief during this unprecedented crisis. As part of this action, the Council adopted Resolution R-2020-417 that directed the Mayor to present a temporary moratorium on residential and commercial evictions during the local emergency due to the Novel Coronavirus, COVID-19. Due to the urgency of this action, the Council President's office, with support from the Mayor, and in conjunction with the City Attorney, has drafted the proposed residential and commercial eviction moratorium for consideration.

PROPOSED ACTIONS:

1. Adopt an emergency ordinance to implement a temporary moratorium on residential and commercial evictions due to nonpayment of rent arising out of a substantial decrease in income or substantial out-of-pocket medical expenses caused by either the novel coronavirus, COVID-19, or any governmental response to COVID-19.

DISCUSSION OF ITEM:

On March 17, 2020, the City Council approved Resolution R-2020-417 directing the Mayor and City Attorney to prepare actions for a temporary moratorium on evictions in the City of San Diego for renters on the basis of nonpayment of rent ("affected renters") where that failure to pay rent results from wage loss resulting from the novel coronavirus (COVID-19) pandemic. The emergency ordinance has been prepared as a result of the Council's approved resolution and incorporates all of the direction in the resolution but the timing of repayment of rent differs slightly as a result of subsequent legal review and conversations with stakeholders.

In support of the residential and business eviction moratorium, the City of San Diego has experienced significant adverse impacts due to COVID-19 to residents and businesses alike in all sectors of the economy. In addition, with the County-wide school closures, the impact this has had on parents with young children who rely on our school districts during the day when they are at work has also caused a significant effect on reduced work hours and wages as evidenced in the following sections.

The sections below outline (1) the key elements of the eviction moratorium proposal for tenants and proposed support for landlords (2) impact on revenue, school closures, and proposed legislative actions, and (3) related San Diego Housing Commission Actions.

1.1. EVICTION MORATORIUM FOR TENANTS

The purpose of this emergency ordinance is to provide housing stability and business stability in the City of San Diego during the COVID-19 pandemic, preventing avoidable homelessness, and maintaining the public health. The temporary moratorium on evictions will protect the health, safety, and welfare of San Diego residents.

As residents face the financial impacts of the COVID-19 pandemic, there is an increased risk of homelessness. Under normal circumstance, if tenants are unable to pay their rent, a landlord may serve a three-day notice to pay rent or quit, file an eviction in Superior court, and receive a judgement against the tenant and if the tenant has not already moved, the sheriff will remove the tenant from the premises. In order to prevent displacement from their current homes, as part of the March 17, 2020 City Council actions, the City Council requested the Superior Court to halt eviction cases, requested the County Sheriff to not service evictions filings and is considering this proposed emergency Eviction Moratorium Ordinance (“Ordinance”) providing temporary protection for tenants from being evicted because they are unable to pay their rent due to suffering a financial hardship caused by the impacts of the COVID-19 pandemic.

A. Tenants Covered by the Legislation

The emergency ordinance will apply to all residential and commercial tenants renting within the City of San Diego.

B. Eviction Protections

The ordinance will allow tenants to defend themselves against evictions for nonpayment of rent if they can demonstrate their income has been substantially reduced due to the COVID-19 pandemic.

Tenant Responsibility – Affected tenants must provide proof that demonstrates that they have suffered a substantial loss of income (household income if a residential tenant or business income if a commercial tenant) or substantial out-of-pocket medical expenses due to COVID-19 in order to receive eviction protections under the moratorium:

1) Income Impacted by COVID-19:

A tenant must present documentation demonstrating financial hardship of a substantial loss of income in order to be eligible for eviction protection. A tenant is considered to be experiencing financial hardship or a substantial loss of income if any of the following apply:

- Loss of employment
- Loss of employment due to diagnosis of COVID-19 or recommended quarantine
- Loss or substantial reduction (30% or greater reduction in salary or hourly wages) in employment due to loss of child care due to school closure
- Loss of employment resulting from need to care for a family member suffering from COVID-19
- Loss of income due to a state/local requirement requiring those 65 and over to stay indoors
- Compliance with any other federal, state or local COVID-19 mandate precluding the tenant from earning their normal income

Any of the aforementioned circumstances must be reasonably evidenced with documentation including but not limited to: note or letter from employer regarding tenant's loss or substantial reduction in employment, payroll records showing substantial loss of income due to COVID-19.

2) Evidence of Loss of Income and/or Substantial Out-of-Pocket Medical Expenses—

In order to show loss of income, a tenant must provide documentation or other objectively verifiable proof. Examples include: Providing copies of business records; Bank statements that illustrate a drop in income; Employer pay stubs showing the same; Letter from an employer notifying tenant of reduction of compensable hours; or other documentation that proves that tenant has not been generating the same level of income due to COVID-19. Furthermore, tenant may show substantial out of pocket medical expenses related to COVID-19.

C. Timing of Notification and Documentation

The tenant has an obligation to provide their landlord with notice that they are an affected tenant as a result of COVID-19 on or before the day that rent is due. The tenant must demonstrate substantial loss of income or substantial out-of-pocket medical expenses resulting from the outbreak of the COVID-19 virus or any government response to the outbreak within one week of notifying the landlord of inability to pay rent due to COVID-19, through documentation or other objectively verifiable means. The tenant may argue as an affirmative defense in an unlawful detainer action that they are an affected tenant.

It is critical to note that landlords are not precluded from negotiating with their tenants to resolve challenges related to a lack of income to pay rent. While the ordinance will protect tenants from eviction, rent will continue to be due under the rental contract and tenants continue to be subject to any other requirements of their rental agreement.

D. Tenant Repayment Plans

As part of this action, tenants who were afforded eviction protection shall have up to six months from the effective date of the ordinance to pay their landlords all unpaid rent. During that time period, the protections against eviction in this ordinance shall apply. The ordinance is not a moratorium or waiver of a tenant's contractual obligation to pay rent. A landlord can still seek the rent from the tenant but they cannot terminate the tenancy and evict the tenant because of a lack payment while the moratorium is in effect. Once the eviction moratorium ends, a landlord will be allowed to exercise their rights to collect rent, demand the past due rent due and evict a tenant under law. A landlord may not charge late fees for any rent that is delayed due to this ordinance.

During the moratorium, landlords and tenants are encouraged to discuss with each other the impacts of COVID-19 on their income and to negotiate a reasonable plan to pay the rent. These efforts will save time, expense, anxiety and uncertainty for both parties. This is an opportunity for both sides to work together during this difficult time where no one is at fault for the circumstances resulting from COVID-19.

1. 2. Proposed Assistance to Landlords

As noted above, the initial discussion of this proposal at the City Council highlighted the need to support landlords, as well as tenants. As part of the March 17, 2020 action, City Council requested that the Mayor and the City's Economic Development Department evaluate and report back to City Council on a strategy with potential options to work with banks and lenders to halt mortgage payments or foreclosures for individuals and landlords who have suffered severe loss of wages and income due to the outbreak of COVID-19.

As a community, it is essential that we come together as a community to ensure everyone, including tenants, landlords, and lenders all work together as we are all intertwined. It is essential during this crisis that everyone work together so that we can mitigate the economic, social and emotional losses we are facing.

In addition to the March 17, 2020, action, the City Council should request that the local, state and federal elected leaders adopt economic aid packages to ensure landlords have minimal impacts to their operations such as:

- Rental assistance to tenants in the form of grants that can be used to pay rent;
- Request County of San Diego extend April 2020 collection of property taxes to a later date;
- Forbearance on water and sewer payments as well as any other city payments that may be deferred;
- City lend low-interest loans to qualifying landlords to help offset the economic impacts of this ordinance;

- Request the lending community allow property owners access to operating and capital reserves to cover costs.

2. IMPACT ON REVENUE, SCHOOL CLOSURES, HOUSING AND RENTAL MARKET, AND EMPLOYMENT AND SMALL BUSINESSES

A. Impact on Revenue

Since the COVID-19 outbreak, one example of the impact that at least 22 conferences have been cancelled at the San Diego Convention Center through April 2020, with an estimated attendance of 107,970 participants. As a result of the current COVID-19 situation, hotels are experiencing 0% to 5% occupancy. The cancellation of those 22 conventions and events at the San Diego Convention Center alone is estimating a loss of 117,032 hotel rooms. To date, the accumulated Transit Occupancy Tax (TOT) revenue lost due to San Diego Convention Center cancellations is approximately \$4.1 million. This loss of business supported 400 convention center employees in addition to about 3,000 union workers that performed a number of tasks from cooking, setting up stages, lightning, among other things. Due to the cancellation of local conferences and other large-attendance events, there has been a significant loss of business opportunity locally. To date, since the COVID-19 outbreak, an estimated \$219.8 million has been lost in projected direct spending in the business community around San Diego in addition to the loss of revenue in Convention Center facilities. These figures will continue to mount as this crisis continues in the upcoming weeks and perhaps months.

B. San Diego Unified School District Closures

On March 12, 2020, the San Diego County Public Health Officer prohibited public or private gatherings of more than 100 people and announced the closure of San Diego Unified schools for three weeks until April 6, 2020. There are over 100,000 students in the San Diego Unified School District, and over 20,000 charter school students. With the prohibition of public and private gatherings and school closures for at least three weeks, families are likely to start finding alternative child care options or modifying or reducing compensable working hours. The costs of child care in this region may be prohibitive for some renters and will likely place an additional strain on those renters who need to miss work to care for home-bound school-age child.

C. Housing and the Rental Market

According to the [2018 City of San Diego Annual Housing Inventory Report](#), 46%, or 240,844 units, of housing is multi-family. As of January 1, 2018, there were a total of 24,797

covenant-restricted affordable housing units (units with deeds containing covenants or restrictions that require those units to be sold or rented at affordable rates for a specified time period) within the City of San Diego. According to the Report, 1,391,676 residents, comprise 42% of the regional population. The City of San Diego's deed restricted affordable housing comprised 53% of the total, region wide.

D. Employment and Small Businesses

According to the [Business Journal](#), "A growing body of research and analysis of the coronavirus fallout points to steep job losses ahead, particularly in sectors supported by consumer spending. Approximately 31 million Americans were employed in the retail, hospitality and food- services sectors — considered the most vulnerable in these earliest days of the crisis — as of the beginning of this year, according to the Bureau of Labor Statistics. Furthermore, according to Bloomberg's Riccadonna, Shulyatyeva and Husby "The dislocation to labor markets is enormous," adding that it very well could hit 7.5% unemployment rate nationally in their worst-case modeling as of March 20, 2020. That would be more than double the nation's unemployment rate of 3.5% prior to the crisis.

For example, the Adams Avenue Business Improvement District (AABID) has approximately 250 storefronts of the 600 business licenses in the AABID. According to Scott Kessler, AABID Director, "The hospitality/restaurant/bar sector is the hardest hit. We have 70 of those operations in the AABID. All of the bars are shuttered but probably half of the restaurants are closed as well with the other half at 15-20% of normal sales with some exceptions." Mr. Kessler further stipulated that there are 400 servers, cooks and bartenders that are out of work as of now with the AABID. He further estimated that sales in the AABID, in the hospitality sector, is losing about \$500k per week that they are closed/in reduced operations. Some of the grocers and convenience stores (17) are doing record sales but the smaller liquor stores are off 30-40%. The Auto sector (18 shops) are all open and doing slightly reduced business off 10-20%

In addition to small neighborhood-oriented businesses, a number of suburban malls and casinos have shuttered their operations due to the COVID-19 emergency which has in turn resulted in thousands of residents who will not go to work. For example, Westfield malls in Escondido (North County), National City (Plaza Bonita), San Diego (Mission Valley), and University City (UTC) are shutting down the majority of their respective operations. Simon Property Group temporarily closed all its malls and outlets and the closure will last until at least March 29. The group owns several properties in San Diego County, including the Fashion Valley mall and Carlsbad and Las Americas Premium outlets. Furthermore, Barona

Resort & Casino, Golden Acorn Casino, Jamul Casino, Sycuan Casino Resort, and Viejas Casino & Resort closed on March 20, 2020, and will remain closed through the end of March.

3. RELATED SAN DIEGO HOUSING COMMISSION ACTIONS:

In response to the package of actions that the City Council adopted on March 17, 2020, the following are actions are also currently underway by the San Diego Housing Commission (SDHC):

1. SDHC, including its nonprofit affiliate, Housing Development Partners (HDP), will not evict any tenants who reside in the 3,732 affordable rental housing units owned or managed by SDHC or HDP due to nonpayment of rent resulting from loss of wages caused by the COVID-19 public health emergency from March 18, 2020, until the proposed City temporary moratorium on such evictions expires.
2. SDHC, through its Grant Team and Policy Team will closely monitor emergency federal, state, and local funding that may become available to assist all renters and landlords within the City of San Diego affected by COVID-19, as well as funding opportunities to help protect individuals and families experiencing homelessness. SDHC will work collaboratively with the City of San Diego and other regional partners to advocate for and apply for access to such funds as soon as possible.

Fiscal Considerations: To be determined.

Charter Section 225 Disclosure of Business Interests: N/A; there is no contract associated with this action.

City Strategic Plan Goal(s)/Objective(s):

Goal 1: Provide high quality public service;

Goal 2: Work in partnership with all of our communities to achieve safe and livable neighborhoods;

Goal 3: Create and sustain a resilient and economically prosperous City with opportunity in every community

Environmental Impact: This series of actions are not a project pursuant to CEQA Guidelines Section 15378(b)(5) (organizational or administrative activities). Further, these are exempt pursuant to CEQA Guidelines Section 15359 (Emergency). These actions are necessary to address a sudden and unexpected occurrence involving a clear and imminent danger, demanding immediate action to prevent or mitigate the loss of, or damage to, life, health, property, or essential public services related to the Covid-19 pandemic.

Equal Opportunity Contracting Information (if applicable): N/A

Previous Council and/or Committee Actions: None.

Key Stakeholders and Community Outreach Efforts: Renters, Commercial Tenants, Landlords, and Lenders

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